

STATE OF VERMONT  
WASHINGTON COUNTY

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WASHINGTON COUNTY  
SUPERIOR COURT

Alan Craig,  
Plaintiff,

v.

ELRAC, INC., et al.,  
Defendants.

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Washington Superior Court

Docket No. 97-02-073

ENTRY

Plaintiff Craig was injured in a vehicular accident with alleged tortfeasor Defendant Battersby, who was driving a car rented from Defendant ELRAC, which "self-insures" its vehicles. Plaintiff and ELRAC interpret the statutes controlling self-insurance differently. As a result, they dispute the amount of liability coverage that might be available to Mr. Battersby. The coverage dispute apparently brought settlement negotiations to a standstill.

ELRAC has filed a motion to dismiss arguing that Mr. Craig lacks standing to raise the issue of coverage because he is a "stranger" to the contract between ELRAC and Battersby. The issue of a tort-plaintiff's standing in a declaratory judgment action over liability coverage has been resolved by the Vermont Supreme Court in favor of standing. See *Cooperative Fire Ins. Ass'n of Vermont v. Bizon*, 166 Vt. 326, 330-32 (1997). The circumstances of this case do not suggest a different outcome. Plaintiff has standing.

Mr. Craig responded to ELRAC's dismissal motion by, among other things, submitting extra-pleading material related to the parties' settlement negotiations. ELRAC has filed a motion to strike these materials. Evidence of settlement negotiations generally is not admissible and should not be filed with the court. In this case, this evidence is irrelevant to the substantive analysis of the standing issue. Additionally, the analysis of standing is subject to the procedural posture of the case. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). In this case, standing was challenged at the pleading stage under Rule 12. Plaintiff's proof of standing in this posture is based only on "general factual allegations," not the evidence supporting those allegations. *Lujan*, 504 U.S. at 561. Under Rule 12, the court ordinarily would not rely on extra-pleading materials. The settlement negotiation materials have no effect on the Rule 12 motion and should be stricken.

For the foregoing reasons, ELRAC's motion to dismiss is DENIED; ELRAC's motion to strike is GRANTED.

Dated at Montpelier, Vermont this 30<sup>th</sup> day of August 2007.

Mary Miles Teachout  
Mary Miles Teachout  
Superior Court Judge